

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Qwest Corporation for Forbearance)	WC Docket No. 04-223
Pursuant to 47 U.S.C. § 160(c) in the Omaha)	
Metropolitan Statistical Area)	
)	
Petition of ACS of Anchorage, Inc. Pursuant to)	WC Docket No. 05-281
Section 10 of the Communications Act of 1934, as)	
Amended, for Forbearance from Sections 251(c)(3))	
and 252(d)(1) in the Anchorage Study Area)	
)	
Petition of ACS of Anchorage, Inc. Pursuant to)	WC Docket No. 06-109
Section 10 of the Communications Act of 1934, as)	
Amended (47 U.S.C. § 160(c)), for Forbearance)	
from Certain Dominant Carrier Regulation of Its)	
Interstate Access Services, and for Forbearance)	
from Title II Regulation of Its Broadband Services,)	
in the Anchorage, Alaska, Incumbent Local)	
Exchange Carrier Study Area)	
)	
Petitions of the Verizon Telephone Companies for)	WC Docket No. 06-172
Forbearance Pursuant to 47 U.S.C. § 160(c) in the)	
Boston, New York, Philadelphia, Pittsburgh,)	
Providence and Virginia Beach Metropolitan)	
Statistical Areas)	
)	
Petition of Qwest Corporation for Forbearance)	WC Docket No. 07-97
Pursuant to 47 U.S.C. § 160(c) in the Denver,)	
Minneapolis St.-Paul, Phoenix, and Seattle)	
Metropolitan Statistical Areas)	

MEMORANDUM OPINION AND MODIFIED PROTECTIVE ORDERS

Adopted: October 6, 2010

Released: October 6, 2010

By the Associate Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On September 16, 2010, Qwest Corporation (Qwest) filed a motion¹ requesting modification of the protective orders adopted in the Qwest Omaha forbearance proceeding, the ACS forbearance proceedings, the Verizon 6 Metropolitan Statistical Area (MSA) forbearance proceeding, and the Qwest 4 MSA forbearance proceeding (together, *Prior Forbearance Proceedings*).² In particular, Qwest seeks to be able to access and use the confidential and highly confidential information included in the Commission's non-redacted versions of the *Qwest Omaha Forbearance Order*, *ACS UNE Forbearance Order*, *ACS Dominance Forbearance Order* (jointly, *ACS Forbearance Orders*), *Verizon 6 MSA Forbearance Order*, and the *Qwest 4 MSA Forbearance Order*³ in its judicial appeal of the *Qwest Phoenix MSA Forbearance Order*.⁴ For the reasons described below, we grant Qwest's request.

¹ Qwest's Motion to Modify Protective Orders, WC Docket Nos. 04-223, 05-281, 06-109, 06-172, 07-97 (filed Sept. 16, 2010) (Qwest's Motion to Modify Forbearance Protective Orders).

² *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Protective Order, 19 FCC Rcd 11377 (WCB 2004) (*Qwest Omaha Protective Order*); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, Protective Order, 20 FCC Rcd 16310 (WCB 2005) (*ACS UNE Protective Order*); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Protective Order, 21 FCC Rcd 6560 (WCB 2006) (*ACS Dominance Protective Order*); *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Order, 21 FCC Rcd 10177 (WCB 2006) (*Verizon 6 MSA First Protective Order*); *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Order, 22 FCC Rcd 892 (WCB 2007) (*Verizon 6 MSA Second Protective Order*); *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, First Protective Order, 22 FCC Rcd 10129 (WCB 2007) (*Qwest 4 MSA First Protective Order*); *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Second Protective Order, 22 FCC Rcd 10134 (WCB 2007) (*Qwest 4 MSA Second Protective Order*).

³ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) (*Qwest Omaha Forbearance Order*), *aff'd*, *Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, Memorandum Opinion and Order, 22 FCC Rcd 1958 (2007) (*ACS UNE Forbearance Order*), *appeals dismissed*, *Covad Comm'n Group, Inc v. FCC*, Nos. 07-70898, 07-71076, 07-71222 (9th Cir. 2007) (dismissing appeals for lack of standing); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, 22 FCC Rcd 16304 (2007) (*ACS Dominance Forbearance Order*), *pets. for recon. pending*; *Petitions of Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Memorandum Opinion and Order, 22 FCC Rcd 21293 (2007) (*Verizon 6* (continued....)

II. BACKGROUND

2. On March 24, 2009, Qwest filed its second petition seeking certain forbearance relief in its service territory within the Phoenix-Mesa-Scottsdale, Arizona MSA (Phoenix MSA).⁵ On June 22, 2010, the Commission released an order concluding that the record evidence did not satisfy the section 10 forbearance standard with respect to any of the forbearance Qwest requested, and, accordingly, the Commission denied the requested relief in the Phoenix MSA.⁶ On July 30, 2010, Qwest filed its appeal of the *Qwest Phoenix MSA Forbearance Order* in the United States Court of Appeals for the Tenth Circuit (Tenth Circuit).⁷

3. Similar to the *Qwest Phoenix MSA Forbearance Order*, all of the final orders adopted in the *Prior Forbearance Proceedings* are based, in part, on factual findings the Commission made in reliance on confidential and/or highly confidential information parties submitted pursuant to the applicable protective orders. Consequently, the non-redacted version of each forbearance order discloses some of the confidential or highly confidential information in these records. Each protective order limits the use of confidential or highly confidential information in the record to that proceeding and any judicial proceeding arising therefrom.⁸ Each protective order further provides that its terms do not terminate at

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MSA Forbearance Order), remanded, *Verizon Tel. Cos. v. FCC*, 570 F.3d 294 (D.C. Cir. 2009) (*Verizon v. FCC*), petition withdrawn, Letter from Kathleen Grillo, Senior Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 (filed Aug. 23, 2010), proceeding terminated, *Verizon 6 MSA Forbearance Petitions Withdrawn; Proceeding Terminated*, WC Docket No. 07-97, Public Notice, DA 10-1665 (WCB Aug. 31, 2010); *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Memorandum Opinion and Order, 23 FCC Rcd 11729 (2008) (*Qwest 4 MSA Forbearance Order*), motion for voluntary remand granted, *Qwest Corp. v. FCC*, No. 08-1257 (D.C. Cir. Aug. 5, 2009), petition withdrawn, Letter from Harisha J. Bastiampillai, Senior Attorney, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-97 (filed Aug. 17, 2010), proceeding terminated, *Qwest 4 MSA Forbearance Petitions Withdrawn; Proceeding Terminated*, WC Docket No. 07-97, Public Notice, DA 10-1561 (WCB Aug. 20, 2010).

⁴ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622 (2010) (*Qwest Phoenix MSA Forbearance Order*), pet. for review pending, *Qwest Corp. v. FCC*, No. 10-9543 (10th Cir. filed July 30, 2010) (*Qwest Corp. v. FCC*).

⁵ See, e.g., *Qwest Phoenix MSA Forbearance Order*, 25 FCC Rcd at 8623, 8631-32, paras. 1, 17. Specifically, Qwest sought forbearance from loop and transport unbundling obligations of section 251(c)(3) and 271(c)(2)(B)(ii) of the Act, as implemented in related provisions of the Commission's rules. *Id.* at 8633, para. 22. For mass market and enterprise switched access services, Qwest also seeks forbearance from Part 61 dominant carrier tariffing requirements; Part 61 price cap regulations; requirements applicable to dominant carriers arising under section 214 of the Act and Part 63 of the Commission's rules concerning the processes for acquiring lines, discontinuing services, and assignments or transfers of control; and certain Computer III requirements including comparably efficient interconnection (CEI) and open network architecture (ONA) requirements. *Id.*

⁶ *Id.* at 8623, para. 2.

⁷ See *supra* note 4.

⁸ See *Qwest Omaha Protective Order*, 19 FCC Rcd at 11379, para. 7 (precluding use of confidential information "for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings"); *ACS UNE Protective Order*, 20 FCC Rcd at 16311, para. 7; *ACS Dominance Protective Order*, 21 FCC Rcd at 6561, (continued...)

the conclusion of the relevant proceeding.⁹

4. As mentioned above, on September 16, 2010, Qwest filed a motion to modify the protective orders adopted in the *Prior Forbearance Proceedings* for purposes of its appeal of the *Qwest Phoenix MSA Forbearance Order* in the Tenth Circuit.¹⁰ Qwest argues that the redacted details of those orders are highly relevant to Qwest's appellate challenge.¹¹ Qwest explains that it intends to argue, among other things, that the *Qwest Phoenix MSA Forbearance Order* unjustifiably diverges from the orders issued in the *Prior Forbearance Proceedings* and, as a result, Qwest "will need to review unredacted versions of those orders and cite in its briefs the actual market-share and other data on which the Commission relied in those orders."¹² Specifically, Qwest requests permission: (i) for its outside appellate and in-house counsel to obtain and review copies of the complete, non-redacted versions of the *Qwest Omaha Forbearance Order*, the *ACS UNE Forbearance Order*, and the *ACS Dominance Forbearance Order*; (ii) for its outside appellate counsel to obtain and review copies of the of the complete, non-redacted versions of the *Verizon 6 MSA Forbearance Order* and *Qwest 4 MSA Forbearance Order*; (iii) for its in-house counsel to obtain and review copies of the "confidential," but not "highly confidential" version of the *Qwest 4 MSA Forbearance Order*; (iv) to provide the Tenth Circuit with non-redacted copies of those five orders, filed under seal; and (v) to refer to, and quote from, those non-redacted orders in their sealed Tenth Circuit filings.¹³

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para. 7; *Verizon 6 MSA First Protective Order*, 21 FCC Rcd at 10179, para. 7; *Verizon 6 MSA Second Protective Order*, 22 FCC Rcd at 895, para. 6; *Qwest 4 MSA First Protective Order*, 22 FCC Rcd at 10130, para. 7; *Qwest 4 MSA Second Protective Order*, 22 FCC Rcd at 10136, para. 5.

⁹ See *Qwest Omaha Protective Order*, 19 FCC Rcd at 11379, para. 11 ("The provisions of this order shall not terminate at the conclusion of this proceeding."); *ACS UNE Protective Order*, 20 FCC Rcd at 16312, para. 11 (same); *ACS Dominance Protective Order*, 21 FCC Rcd at 6562, para. 11 (same); *Verizon 6 MSA First Protective Order*, 21 FCC Rcd at 10179, para. 11 (same); *Verizon 6 MSA Second Protective Order*, 22 FCC Rcd at 898, para. 20 (same); *Qwest 4 MSA First Protective Order*, 22 FCC Rcd at 10131, para. 11; *Qwest 4 MSA Second Protective Order*, 22 FCC Rcd at 10139, para. 19.

¹⁰ Qwest's Motion to Modify Forbearance *Protective Orders* at 1-2. The *Qwest Omaha Protective Order* states that "[n]othing in this order shall prevent any party or other person from seeking modification of this order." *Qwest Omaha Protective Order*, 19 FCC Rcd at 11379, para. 12; see also *ACS UNE Protective Order*, 20 FCC Rcd at 16312, para. 11 (same); *ACS Dominance Protective Order*, 21 FCC Rcd at 6562, para. 12; *Verizon 6 MSA First Protective Order*, 21 FCC Rcd at 10179, para. 12 (same); *Qwest 4 MSA First Protective Order*, 22 FCC Rcd at 10131, para. 12 (same).

¹¹ Qwest's Motion to Modify Forbearance *Protective Orders* at 2; see also *id.* at 5 (stating that "Qwest does not need further authorization to file the unredacted version of the *Phoenix Order* itself in the Tenth Circuit, since by their terms the protective orders in that proceeding authorize the use of proprietary information on direct review of the Commission's order in that proceeding").

¹² *Id.* at 4.

¹³ *Id.* at 4-5. Qwest states its outside and in-house counsel will sign confidentiality acknowledgments for the relevant protective orders, as modified to permit the use of non-public information for the limited purpose of Qwest's Tenth Circuit appeal. *Id.* at 6. Qwest adds that it would file under seal the Commission's orders and any briefs or other submissions containing confidential or highly confidential information and Qwest will not serve the non-redacted version of such documents on any party that has not signed the relevant protective orders as modified by the Commission. *Id.* at 6-7.

5. Finally, we note that the Wireline Competition Bureau (Bureau), in the *First Modification Order*,¹⁴ the *Second Modification Order*,¹⁵ and the *Third Modification Order*¹⁶ granted the same type of relief Qwest is requesting here to Verizon Telephone Companies (Verizon) for purposes of Verizon's judicial appeal of the *Verizon 6 MSA Forbearance Order* and to Qwest for purposes of its judicial appeal of the *Qwest 4 MSA Forbearance Order*. On February 8, 2008 and August 4, 2008, with the consent of the parties whose confidential information was at issue, the Bureau modified the protective orders in the Qwest Omaha forbearance proceeding, the ACS forbearance proceedings, and the Qwest 4 MSA forbearance proceeding to allow access and use of the confidential portions of the non-redacted version of these orders in the judicial appeal of the *Verizon 6 MSA Forbearance Order*.¹⁷ On September 17, 2008, with the consent of the parties whose confidential information was at issue, the Bureau also modified the protective orders in the Qwest Omaha forbearance proceeding, the ACS forbearance proceedings, and the Verizon 6 MSA forbearance proceeding to similarly allow access and use of the confidential portions of the non-redacted version of the forbearance orders in the judicial appeal of the *Qwest 4 MSA Forbearance Order*.¹⁸

¹⁴ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area; Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area; Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket Nos. 04-223, 05-281, 06-109, Memorandum Opinion and Order and Modified Protective Orders, 23 FCC Rcd 1716 (WCB 2008) (*First Modification Order*).

¹⁵ *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Memorandum Opinion and Order and Modified Protective Orders, 23 FCC Rcd 11884 (WCB 2008) (*Second Modification Order*).

¹⁶ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area; Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area; Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area; Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket Nos. 04-223, 05-281, 06-109, 06-172, Memorandum Opinion and Modified Protective Orders, 23 FCC Rcd 13500 (WCB 2008) (*Third Modification Order*).

¹⁷ *First Modification Order*, 23 FCC Rcd at 1718, para. 5; *Second Modification Order*, 23 FCC Rcd at 11887, para. 6. The non-redacted version of the *Qwest 4 MSA Forbearance Order* contains both confidential information and highly confidential information. Compare, e.g., *Qwest 4 MSA Forbearance Order*, 23 FCC Rcd at 11755, para. 36 n.134 (setting forth highly confidential information) with *id.* at 11756, para. 36 n.135 (setting forth confidential information).

¹⁸ See *Third Modification Order*, 23 FCC Rcd at 13504, para. 6.

III. DISCUSSION

6. Similar to the *First Modification Order*, *Second Modification Order*, and *Third Modification Order*, we conclude that modifying the *Qwest Omaha Protective Order*, the *ACS UNE Protective Order*, the *ACS Dominance Protective Order*, the *Verizon 6 MSA Second Protective Order*,¹⁹ the *Qwest 4 MSA First Protective Order*, and the *Qwest 4 MSA Second Protective Order* for purposes of the judicial appeal of the *Qwest Phoenix MSA Forbearance Order* in the Tenth Circuit is in the public interest. Therefore, we modify these protective orders to permit limited access to and disclosure and use of the non-redacted versions of these orders solely for purposes of the judicial appeal of the *Qwest Phoenix MSA Forbearance Order*.

7. The portions of the *Qwest Omaha Forbearance Order*, the *ACS Forbearance Orders*, the *Verizon 6 MSA Forbearance Order*, and the *Qwest 4 MSA Forbearance Order* subject to redaction disclose information regarding various parties that was designated as confidential or highly confidential pursuant to the protective orders in each proceeding. Each of these entities, with the exception of Cox Communications, Inc. (Cox),²⁰ has consented to modifying the protective orders in the manner adopted here.²¹ Specifically, Cox opposes Qwest's request to modify the protective orders in the Verizon 6 MSA and the Qwest 4 MSA forbearance proceedings "solely to safeguard its sensitive competitive

¹⁹ Qwest requests "for its outside appellate counsel to obtain and review copies of the complete, non-redacted versions of the *Verizon 6 MSA Forbearance Order*." See Qwest's Motion to Modify Forbearance Protective Orders at 5. The non-redacted version of the *Verizon 6 MSA Forbearance Order* contains only highly confidential information. Because the non-redacted version of the *Verizon 6 MSA Forbearance Order* contains highly confidential information subject to the *Verizon 6 MSA Second Protective Order*, but no confidential information subject to the *Verizon 6 MSA First Protective Order*, we find no reason to modify the *Verizon 6 MSA First Protective Order*. See *Verizon 6 MSA Forbearance Order*, 22 FCC Rcd at 21308, 21314, paras. 27 & 37 n.116 (redacting highly confidential information); *Third Modification Order*, 23 FCC Rcd at 13504, para. 6 n.21. We also note that Qwest seeks access to the non-redacted version of the D.C. Circuit's opinion regarding the *Verizon 6 MSA Forbearance Order*. Qwest's Motion to Modify Forbearance Protective Orders at 5 n.7; see *supra* note 3. We do not purport to lift restrictions, if any, on access to or use of the D.C. Circuit's non-redacted *Verizon v. FCC* opinion that may exist under D.C. Circuit rules or orders. However, to the extent that our own prior protective orders limited access to that opinion in this proceeding, we modify them to permit the parties covered by this order to obtain access to the opinion.

²⁰ Cox Communications, Inc. Opposition to Motion to Modify Protective Order, WC Docket Nos. 04-223, 05-281, 06-109, 06-172, 07-97 (filed Sept. 28, 2010) (Cox's Opposition Motion to Modify Forbearance Protective Orders).

²¹ See Qwest's Motion to Modify Forbearance Protective Orders at 7-8. Qwest adds that Integra and tw telecom (formerly Time Warner Telecom) have consented to modification of the protective orders on the condition that Qwest and other parties treat as "highly confidential" (and subject to review by outside counsel only) the Integra and tw telecom information that appears in footnote 134 of the *Qwest 4 MSA Forbearance Order*. *Id.* at 7 n.12; see also *Qwest 4 MSA Forbearance Order*, 23 FCC Rcd at 11755-56, para. 36 n.134. Integra and tw telecom claim that this information was submitted on their behalf in WC Docket No. 07-97 as "highly confidential" pursuant to the *Second Protective Order*, but that it was designated as merely "confidential" in the *Qwest 4 MSA Forbearance Order*. See Letter from Thomas Jones and Nirali Patel, Counsel for Integra Telecom, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-97 (filed July 1, 2008); Letter from Thomas Jones and Nirali Patel, Counsel for Time Warner Telecom, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-97 (filed June 30, 2008).

information.”²² Cox argues that because both Qwest and Verizon have voluntarily withdrawn their forbearance requests and those two proceedings are now terminated, “there is no legitimate reason for Qwest to gain or maintain access to Cox’s confidential information from either of those proceedings.”²³ Cox adds that Qwest’s motion fails to identify a single piece of confidential information submitted by Cox in those terminated proceedings that is necessary to the Tenth Circuit’s consideration of Qwest’s appeal of the *Qwest Phoenix MSA Forbearance Order*.²⁴ Cox further states that granting Qwest’s motion “would yield competitors valuable insights into Cox’s customer and line growth in the Phoenix market.”²⁵ Qwest, in response, states that Cox’s opposition is unpersuasive explaining that it filed the motion “so that the Tenth Circuit may judge for itself whether the Commission’s *Phoenix Order* impermissibly departs from key aspects of these prior orders.”²⁶ Qwest further states that “[c]ontrary to Cox’s apparent misimpression, Qwest does not seek a broader right to submit any nonpublic information that was submitted into the record of those earlier proceedings but is not reflected in the Commission’s orders. It seeks only to allow the Tenth Circuit to read—and the parties to submit confidential briefs quoting from—the full FCC precedent that the *Phoenix Order* pervasively cites and partially overrules.”²⁷

8. We find no valid reason to deny Qwest’s motion and conclude that modifying the protective orders in the *Prior Forbearance Proceedings* is in the public interest. While Cox does have an interest in maintaining the confidentiality of its information, we believe that the modified protective orders we adopt today ensure that any confidential information continues to be properly safeguarded against inappropriate use or any inappropriate disclosure. Importantly, we modify the protective orders solely for the pending appeal of the *Qwest Phoenix MSA Forbearance Order* before the Tenth Circuit. We also disagree with Cox’s claims that because the Verizon 6 MSA and Qwest 4 MSA proceedings have been terminated, there is no legitimate reason for Qwest to have access to Cox’s confidential information in the Verizon 6 MSA and Qwest 4 MSA proceedings.²⁸ In order for the Tenth Circuit to properly evaluate the

²² Cox’s Opposition to Motion to Modify Forbearance *Protective Orders* at 9; see also *id.* at 5 (stating that the information in the Verizon 6 and Qwest 4 MSA proceedings remains competitively sensitive as it is “just three to four years old, is the only information of its kind that Cox has submitted to the FCC, and never has been made public”).

²³ *Id.* at 2.

²⁴ *Id.*; see also *id.* at 5-6 (Cox states that the *Qwest Phoenix MSA Forbearance Order* “barely mentions the analysis employed in those orders, and does not cite to any of Cox’s confidential data to support its analytical framework.”).

²⁵ *Id.* at 5.

²⁶ Qwest’s Reply to Opposition to Motion to Modify Protective Orders, WC Docket Nos. 04-223, 05-281, 06-109, 06-172, 07-97 at 2 (filed Sept. 30, 2010) (Qwest’s Reply to Opposition). Qwest also points out that in the two orders in dispute, “the Commission mentions Cox-specific proprietary information in *only a single passage*: the first sentence of footnote 106 in the *Qwest 4-MSA Order*, which identifies Cox’s 2008 market share in Phoenix. That market share information is not only dated, but highly generalized; for example, it is averaged across the Phoenix MSA and is not broken down by wire center or zip code. In contrast, the *Qwest 4-MSA Order* contains equally or more sensitive information from other providers, such as XO, PAETEC, Time Warner, Comcast, and Integra.” *Id.* at 1-2. Qwest further states that “[s]ignificantly, each of those providers has consented to the relief sought in this motion.” *Id.* at 2.

²⁷ *Id.* at 1.

²⁸ Cox’s Opposition Motion to Modify Forbearance *Protective Orders* at 2.

issues presented to it on appeal, including Qwest's claims that the *Qwest Phoenix MSA Forbearance Order* departs from prior forbearance orders, the Tenth Circuit should have access to the Commission's full reasoning in the prior forbearance orders, including the confidential and highly confidential information cited to in those orders.

9. Therefore, as we have done in the past, we modify the *Qwest Omaha Protective Order*, the *ACS UNE Protective Order*, the *ACS Dominance Protective Order*, the *Verizon 6 MSA Second Protective Order*, the *Qwest 4 MSA First Protective Order*, and the *Qwest 4 MSA Second Protective Order* accordingly. We emphasize that these modifications permit limited access to and disclosure and use of the non-redacted version of the *Qwest Omaha Forbearance Order*, the *ACS Forbearance Orders*, the *Verizon 6 MSA Forbearance Order*, and the *Qwest 4 MSA Forbearance Order* solely for the pending appeal of the *Qwest Phoenix MSA Forbearance Order* before the Tenth Circuit and no other future judicial or regulatory proceedings.

10. Furthermore, consistent with the *First Modification Order*, the *Second Modification Order*, and the *Third Modification Order*, we find that all litigants participating in the appeal of the *Qwest Phoenix MSA Forbearance Order* should have the same rights as Qwest and/or its outside counsel regarding the non-redacted version of the *Qwest Omaha Forbearance Order*, the *ACS Forbearance Orders*, the *Verizon 6 MSA Forbearance Order*, and the *Qwest 4 MSA Forbearance Order*.²⁹ By litigants, we mean those parties who are named petitioners or intervenors and their in-house and outside appellate counsel to the extent such individuals are otherwise entitled to access the non-redacted versions of these orders under the applicable protective orders. We believe the limited modification of the protective orders in each of these proceedings we adopt here will ensure that all parties involved in the appeal will have access to the same precedent to support their arguments before the Tenth Circuit. We emphasize that the terms of the modified protective orders set forth as appendices will govern access to and use of the non-redacted *Qwest Omaha Forbearance Order*, the *ACS Forbearance Orders*, *Verizon 6 MSA Forbearance Order*, and the *Qwest 4 MSA Forbearance Order*.

11. This order is effective on October 22, 2010, unless Cox files an application for review of this order prior to the effective date. We delay the effective date of this order because under section 0.459(g) of the Commission's rules, if a request for confidentiality is denied, the person who submitted the request may, within ten business days, file an application for review by the Commission.³⁰ During this time, the

²⁹ *First Modification Order*, 23 FCC Rcd at 1718, para. 6; *Second Modification Order*, 23 FCC Rcd at 11888, para. 8; *Third Modification Order*, 23 FCC Rcd 13505, para. 7. As we have done in the past, we modify the protective orders in the *Qwest Omaha forbearance proceeding*, *ACS forbearance proceedings*, and *Qwest 4 MSA proceeding* to allow access by the litigants and their outside appellate and in-house counsel. As noted above, we only modify the second protective order adopted in the *Verizon 6 MSA proceeding*. See *supra* note 19. Because in-house counsel are not permitted to access highly confidential information under the *Verizon 6 MSA Second Protective Order*, for purposes of the present appeal, comparable to the approach adopted in the *Third Modification Order*, we limit access to the highly confidential version of the *Verizon 6 MSA Forbearance Order* to outside counsel only. See *id.*; *Verizon 6 MSA Second Protective Order*, 23 FCC Rcd at 895, para. 8; *Third Modification Order*, 23 FCC Rcd at 13504, para. 6, n.21.

³⁰ 47 C.F.R. § 0.459(g).

release of information, even under a protective order, will be delayed pursuant to Section 0.459(g).³¹ If the application for review is denied, the person who submitted the request will be afforded ten business days in which to seek a judicial stay of the ruling.³²

12. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 160, and section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the Modified Protective Order in WC Docket No. 04-223 IS ADOPTED, effective October 22, 2010, unless Cox Communications, Inc. files an application for review of this order prior to the effective date.

13. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 160, and section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the Modified Protective Order in WC Docket No. 05-281 IS ADOPTED, effective October 22, 2010, unless Cox Communications, Inc. files an application for review of this order prior to the effective date.

14. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 160, and section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the Modified Protective Order in WC Docket No. 06-109 IS ADOPTED, effective October 22, 2010, unless Cox Communications, Inc. files an application for review of this order prior to the effective date.

15. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 160, and section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the Modified Second Protective Order in WC Docket No. 06-172 IS ADOPTED, effective October 22, 2010, unless Cox Communications, Inc. files an application for review of this order prior to the effective date.

³¹ See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816, 24883, para. 23 (1998) (noting "that where a request for confidential treatment is pending, release of information, even under a protective order, will be delayed pursuant to Section 0.459(g) to permit the submitting party to file an application for review with the Commission and then a judicial stay").

³² 47 C.F.R. § 0.459(g).

16. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 160, and section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the Modified Protective Orders in WC Docket No. 07-97 ARE ADOPTED, effective October 22, 2010, unless Cox Communications, Inc. files an application for review of this order prior to the effective date.

FEDERAL COMMUNICATIONS COMMISSION

Marcus Maher
Associate Chief, Wireline Competition Bureau

APPENDIX A

Modified Protective Order in WC Docket No. 04-223

1. Documents submitted to the Commission in the course of section 10 forbearance proceedings may represent or contain confidential or proprietary information. This *Modified Protective Order* is intended to facilitate and expedite the review of confidential information submitted by parties to this proceeding, including the privileged and confidential information, including trade secrets or financial information, submitted by Qwest in the non-redacted version of its Petition in the above-referenced proceeding. To ensure that documents and materials in the above-referenced proceeding considered by the applicants or other submitters to be confidential and proprietary are afforded protection, the Wireline Competition Bureau hereby enters this *Modified Protective Order*:

2. Non-Disclosure. Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person. A “stamped confidential document” means any document which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER” to signify that it contains information believed to be subject to protection under the Commission’s rules. For purposes of this order, the term “document” means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission’s rules, pursuant to subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

3. Permissible Disclosure. Notwithstanding paragraph 2, stamped confidential documents may be disclosed subject to the provisions of subparagraphs (a) and (b), to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding, and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this *Modified Protective Order*, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (See Attachment for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is listed in paragraph 3 (other than an attorney) and who is employed by a competitor or potential competitor of the party

that so designated the document, the party seeking such disclosure shall give at least five days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. Such notice shall also be filed in the Commission's Electronic Comment Filing System (ECFS) for this docket. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

4. Access to Confidential Information. Any party producing confidential information pursuant to this order shall designate a Washington, D.C., location and such other locations as may be convenient at which all parties shall be permitted access to and review of requested confidential information pursuant to the other terms of this order, or pursuant to alternative arrangements agreed upon by the parties. Any such access or review may be limited to regular business hours after reasonable notice by the requesting party.

5. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided that such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the legend "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER."

6. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission in accordance with paragraph 5, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents. The Commission may, *sua sponte* or by petition, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. *See generally* 47 C.F.R. § 0.459.

7. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising there from, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all confidential information is redacted. Persons filing pleadings under seal based on confidential information provided by others shall serve such pleadings by hand or overnight delivery on the party originally requesting confidential treatment of the underlying information.

8. Participation in Appeal of *Qwest Phoenix MSA Forbearance Order*. Notwithstanding any other provision of this *Modified Protective Order*, and solely for the purpose of participating in the appeal of the *Qwest Phoenix MSA Forbearance Order*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622 (2010) to the United States Court of Appeals for the Tenth Circuit (*Qwest Corp. v. FCC*, Docket No. 10-9543), litigants' outside appellate and in-house counsel who have signed the certification required by paragraph 3(a) may: (i) obtain and review copies of the complete, non-redacted version of the *Qwest Omaha Forbearance Order*; and (ii) file with the court the non-redacted *Qwest*

Omaha Forbearance Order or confidential information therein only in accordance with the rules of the United States Court of Appeals for the Tenth Circuit. Persons relying on this paragraph must comply with all of the other requirements of this *Modified Protective Order* to the extent not inconsistent with this paragraph. Persons relying on this paragraph should file the written notice required by subparagraph 3(b) with the Wireline Competition Bureau in WC Docket No. 04-223 via the Commission's ECFS.

9. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

10. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the section 10 proceeding in which a confidential document is submitted and, in the course thereof, relying generally on examination of stamped confidential documents submitted in that proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraphs 3 or 8 above.

11. Prohibited Copying. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Commission, with notice to counsel so designating the document.

12. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding.

13. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

14. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for purposes of filing at the Commission under seal.

15. Return of Confidential Documents. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties that have received stamped confidential documents shall either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

16. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, *see* 47 C.F.R. § 1.24, or possible referral to the relevant local bar.

ATTACHMENT TO APPENDIX A

Acknowledgment of Confidentiality

WC DOCKET NO. 04-223

I have received a copy of the *Modified Protective Order* in WC Docket No. 04-223. I have read the order and agree to comply with and be bound by the terms and conditions of this *Modified Protective Order* for the purpose of participating in the appeal of the *Qwest Phoenix MSA Forbearance Order*. The signatory understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of this *Modified Protective Order*.

SIGNATURE:

NAME PRINTED:

TITLE:

ADDRESS:

REPRESENTING:

EMPLOYER:

DATE:

APPENDIX B

Modified Protective Order in WC Docket No. 05-281

1. Documents submitted to the Commission in the course of section 10 forbearance proceedings may represent or contain confidential or proprietary information. This *Modified Protective Order* is intended to facilitate and expedite the review of confidential information submitted by parties to this proceeding, including any privileged and confidential information, including trade secrets or financial information, submitted by ACS of Anchorage, Inc. (ACS) in the above-referenced proceeding. To ensure that documents and materials in the above-referenced proceeding considered by the applicants or other submitters to be confidential and proprietary are afforded protection, the Wireline Competition Bureau hereby enters this *Modified Protective Order*:

2. Non-Disclosure. Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person. A “stamped confidential document” means any document which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER” to signify that it contains information believed to be subject to protection under the Commission's rules. For purposes of this order, the term “document” means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission's rules, pursuant to subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

3. Permissible Disclosure. Notwithstanding paragraph 2, stamped confidential documents may be disclosed subject to the provisions of subparagraphs (a) and (b), to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding, and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this *Modified Protective Order*, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (See Attachment for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is listed in paragraph 3 (other than an attorney) and who is employed by a competitor or potential competitor of the party

that so designated the document, the party seeking such disclosure shall give at least five days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. Such notice shall also be filed in the Commission's Electronic Comment Filing System (ECFS) for this docket. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

4. Access to Confidential Information. Any party producing confidential information pursuant to this order shall designate a Washington, D.C., location and such other locations as may be convenient at which all parties shall be permitted access to and review of requested confidential information pursuant to the other terms of this order, or pursuant to alternative arrangements agreed upon by the parties. Any such access or review may be limited to regular business hours after reasonable notice by the requesting party.

5. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided that such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the legend "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER."

6. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission in accordance with paragraph 5, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents. The Commission may, *sua sponte* or by petition, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. *See generally* 47 C.F.R. § 0.459.

7. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising there from, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all confidential information is redacted. Persons filing pleadings under seal based on confidential information provided by others shall serve such pleadings by hand or overnight delivery on the party originally requesting confidential treatment of the underlying information.

8. Participation in Appeal of *Qwest Phoenix MSA Forbearance Order*. Notwithstanding any other provision of this *Modified Protective Order*, and solely for the purpose of participating in the appeal of the *Qwest Phoenix MSA Forbearance Order*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622 (2010) to the United States Court of Appeals for the Tenth Circuit (*Qwest Corp. v. FCC*, Docket No. 10-9543), litigants' outside appellate and in-house counsel who have signed the certification required by paragraph 3(a) may: (i) obtain and review copies of the complete, non-redacted version of the *ACS UNE Forbearance Order*; and (ii) file with the court the non-redacted *ACS UNE Forbearance Order* or confidential information therein only in accordance with the rules of the United States Court of Appeals for the Tenth Circuit. Persons relying on this paragraph must comply with all of the other requirements of this

Modified Protective Order to the extent not inconsistent with this paragraph. Persons relying on this paragraph should file the written notice required by subparagraph 3(b) with the Wireline Competition Bureau in WC Docket No. 05-281 via ECFS.

9. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

10. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the section 10 proceeding in which a confidential document is submitted and, in the course thereof, relying generally on examination of stamped confidential documents submitted in that proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 3 or 8 above.

11. Prohibited Copying. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Commission, with notice to counsel so designating the document.

12. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding.

13. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

14. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for purposes of filing at the Commission under seal.

15. Return of Confidential Documents. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties that have received stamped confidential documents shall either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

16. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, *see* 47 C.F.R. § 1.24, or possible referral to the relevant local bar.

ATTACHMENT TO APPENDIX B**Acknowledgment of Confidentiality****WC DOCKET NO. 05-281**

I have received a copy of the *Modified Protective Order* in WC Docket No. 05-281. I have read the order and agree to comply with and be bound by the terms and conditions of this *Modified Protective Order* for the purpose of participating in the appeal of the *Qwest Phoenix MSA Forbearance Order*. The signatory understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of this *Modified Protective Order*.

SIGNATURE:

NAME PRINTED:

TITLE:

ADDRESS:

REPRESENTING:

EMPLOYER:

DATE:

APPENDIX C

Modified Protective Order in WC Docket No. 06-109

1. Documents submitted to the Commission in the course of section 10 forbearance proceedings may represent or contain confidential or proprietary information. This *Modified Protective Order* is intended to facilitate and expedite the review of confidential information submitted by parties to this proceeding, including any privileged and confidential information, including trade secrets or financial information, submitted by ACS of Anchorage, Inc. (ACS) in the above-referenced proceeding. To ensure that documents and materials in the above-referenced proceeding considered by the applicants or other submitters to be confidential and proprietary are afforded protection, the Wireline Competition Bureau hereby enters this *Modified Protective Order*:

2. Non-Disclosure. Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person. A “stamped confidential document” means any document which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER” to signify that it contains information believed to be subject to protection under the Commission’s rules. For purposes of this order, the term “document” means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission’s rules, pursuant to subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

3. Permissible Disclosure. Notwithstanding paragraph 2, stamped confidential documents may be disclosed subject to the provisions of subparagraphs (a) and (b), to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding, and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this *Modified Protective Order*, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (See Attachment for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is listed in paragraph 3 (other than an attorney) and who is employed by a competitor or potential competitor of the party

that so designated the document, the party seeking such disclosure shall give at least five days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. Such notice shall also be filed in the Commission's Electronic Comment Filing System (ECFS) for this docket. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

4. Access to Confidential Information. Any party producing confidential information pursuant to this order shall designate a Washington, D.C., location and such other locations as may be convenient at which all parties shall be permitted access to and review of requested confidential information pursuant to the other terms of this order, or pursuant to alternative arrangements agreed upon by the parties. Any such access or review may be limited to regular business hours after reasonable notice by the requesting party.

5. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided that such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the legend "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER."

6. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission in accordance with paragraph 5, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents. The Commission may, *sua sponte* or by petition, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. *See generally* 47 C.F.R. § 0.459.

7. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising there from, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all confidential information is redacted. Persons filing pleadings under seal based on confidential information provided by others shall serve such pleadings by hand or overnight delivery on the party originally requesting confidential treatment of the underlying information.

8. Participation in Appeal of *Qwest Phoenix MSA Forbearance Order*. Notwithstanding any other provision of this *Modified Protective Order*, and solely for the purpose of participating in the appeal of the *Qwest Phoenix MSA Forbearance Order*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622 (2010) to the United States Court of Appeals for the Tenth Circuit (*Qwest Corp. v. FCC*, Docket No. 10-9543), litigants' outside appellate and in-house counsel who have signed the certification required by paragraph 3(a) may: (i) obtain and review copies of the complete, non-redacted version of the *ACS Dominance Forbearance Order*; and (ii) file with the court the non-redacted *ACS Dominance Forbearance Order* or confidential information therein only in accordance with the rules of the United States Court of Appeals for the Tenth Circuit. Persons relying on this paragraph must comply with all

of the other requirements of this *Modified Protective Order* to the extent not inconsistent with this paragraph. Persons relying on this paragraph should file the written notice required by subparagraph 3(b) with the Wireline Competition Bureau in WC Docket No. 06-109 via ECFS.

9. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

10. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the section 10 proceeding in which a confidential document is submitted and, in the course thereof, relying generally on examination of stamped confidential documents submitted in that proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 3 or 8 above.

11. Prohibited Copying. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Commission, with notice to counsel so designating the document.

12. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding.

13. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

14. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for purposes of filing at the Commission under seal.

15. Return of Confidential Documents. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties that have received stamped confidential documents shall either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

16. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, *see* 47 C.F.R. § 1.24, or possible referral to the relevant local bar.

ATTACHMENT TO APPENDIX C

Acknowledgment of Confidentiality

WC DOCKET NO. 06-109

I have received a copy of the *Modified Protective Order* in WC Docket No. 06-109. I have read the order and agree to comply with and be bound by the terms and conditions of this *Modified Protective Order* for the purpose of participating in the appeal of the *Qwest Phoenix MSA Forbearance Order*. The signatory understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of this *Modified Protective Order*.

SIGNATURE:

NAME PRINTED:

TITLE:

ADDRESS:

REPRESENTING:

EMPLOYER:

DATE:

APPENDIX D

Modified Second Protective Order in WC Docket No. 06-172

1. Any party seeking access to confidential documents subject to the *Modified Second Protective Order* shall request access pursuant to the terms of the *Modified Second Protective Order* and must sign the Acknowledgement of Confidentiality, attached as Attachment.

2. *Definitions.* As used herein, capitalized terms, not otherwise defined herein, shall have the following meanings:

“Stamped Highly Confidential Document” means any document, or any part thereof, that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings it to the attention of a reasonable examiner) “HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 06-172 before the Federal Communications Commission,” unless the Commission determines, *sua sponte* or by request pursuant to sections 0.459 or 0.461 of its rules, that any such document is not entitled to such confidential treatment. The term “document” means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document a “Stamped Highly Confidential Document,” a Submitting Party signifies that it contains information that the Submitting Party believes should be subject to protection under the Freedom of Information Act (FOIA), the Commission’s implementing rules and this *Modified Second Protective Order*.

“Highly Confidential Information” means information contained in Stamped Highly Confidential Documents or derived therefrom that is not otherwise available from publicly available sources. Specifically, Highly Confidential Information covered by the *Modified Second Protective Order* refer to those portions of documents or data – or entire documents, if eligible in their entirety – that disclose numbers of customers disaggregated by customer type and a market area smaller than the Submitting Party’s franchise area (such as carrier-specific E911 line count listings for a Metropolitan Statistical Area (MSA) or wire center service area). To the extent that a Submitting Party believes that future submissions are entitled to be covered by the *Modified Second Protective Order*, the Submitting Party must file a letter explaining such claim, and the Submitting Party may file under this *Modified Second Protective Order* only those documents specifically authorized by the Bureau.

“Outside Counsel of Record” or “Outside Counsel” means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in these proceedings, provided that such persons are not involved in competitive decision-making, *i.e.*, Outside Counsel’s activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or of any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Counsel of Record includes any attorney representing a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

“Outside Consultants” means consultants or experts retained for the purpose of assisting Counsel or a party in this proceeding, provided that the Outside Consultants are not involved in competitive decision-making, *i.e.*, Outside Consultants’ activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Consultants include any expert employed by a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

“Reviewing Party” means a person who has obtained access to Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 6 and 9 of this *Modified Second Protective Order*.

3. *Use of Highly Confidential Information.* Persons obtaining access to Highly Confidential Information (including Stamped Highly Confidential Documents) under this *Modified Second Protective Order* shall use the information solely for the preparation and conduct of this forbearance proceeding before the Commission as delimited in this and subsequent paragraphs, and any judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including, without limitation, business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Highly Confidential Documents or Highly Confidential Information in its decision in this proceeding, it will do so by redacting any Highly Confidential Information from the public version of the decision and by making the non-redacted version of the decision available only to a court and to those persons entitled to access to Highly Confidential Information under this *Modified Second Protective Order*.

4. *Participation in Appeal of Qwest Phoenix MSA Forbearance Order.* Notwithstanding any other provision of this *Modified Second Protective Order*, and solely for the purpose of participating in the appeal of the *Qwest Phoenix MSA Forbearance Order*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622 (2010) to the United States Court of Appeals for the Tenth Circuit (*Qwest Corp. v. FCC*, Docket No. 10-9543), litigants’ outside appellate counsel who have signed the certification required by paragraph 1 may: (i) obtain and review copies of the complete, non-redacted version of the *Verizon 6 MSA Forbearance Order*; and (ii) file with the court the non-redacted *Verizon 6 MSA Forbearance Order* or highly confidential information therein only in accordance with the rules of the United States Court of Appeals for the Tenth Circuit. Persons relying on this paragraph must comply with all of the other requirements of this *Modified Second Protective Order* to the extent not inconsistent with this paragraph. Persons relying on this paragraph should file the written notice required by paragraph 9 with the Wireline Competition Bureau in WC Docket No. 06-172 via the Commission’s Electronic Comment Filing System (ECFS).

5. *Non-Disclosure of Stamped Highly Confidential Information.* Except with the prior written consent of the Submitting Party, or as hereinafter provided under this *Modified Second Protective Order*, neither a Stamped Highly Confidential Document nor any Highly Confidential Information may be disclosed by a Reviewing Party to any person other than the Commission and its staff.

6. *Permissible Disclosure.* Subject to the requirements of paragraph 9, Stamped Highly Confidential Documents may be reviewed by Outside Counsel and Outside Consultants. Outside Counsel and Outside Consultants may disclose Stamped Highly Confidential Documents and other Highly Confidential Information to: (1) paralegals or other employees of such Outside Counsel or Outside Consultants not described in clause 2 of this paragraph assisting Outside Counsel or Outside Consultants in this proceeding; (2) employees of such Outside Counsel or Outside Consultants involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding; and (3) employees of third-party contractors performing one or more of the functions set forth in clause 2 of this paragraph. Reviewing Parties may discuss and share the contents of the Stamped Highly Confidential Documents and Highly Confidential Information with any other Reviewing Party and with the Commission and its staff. A Submitting Party’s Stamped Highly Confidential Documents and Highly Confidential Information may also be disclosed to employees and Counsel of the Submitting Party, as otherwise permitted.

7. *Protection of Stamped Highly Confidential Documents and Highly Confidential Information.* Persons described in paragraph 6 shall have the obligation to ensure that access to Stamped Highly Confidential Documents and Highly Confidential Information is strictly limited as prescribed in this *Modified Second Protective Order*. Such persons shall further have the obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in this *Modified Second Protective Order*; and (2) Stamped Highly Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 13 below.

8. *Prohibited Copying.* If, in the judgment of the Submitting Party, a document contains information so sensitive (even given its Highly Confidential designation) that it should not be copied by anyone, it shall bear the additional legend “Copying Prohibited” and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to Outside Counsel of Record for the Submitting Party.

9. *Procedures for Obtaining Access to Highly Confidential Documents.* In all cases where access to Stamped Highly Confidential Documents and Highly Confidential Information is permitted pursuant to paragraph 6, before reviewing or having access to any Stamped Highly Confidential Documents or Highly Confidential Information, each person seeking such access shall execute the attached Acknowledgment of Confidentiality (Acknowledgment) and file it with the Bureau via ECFS for this docket. All such persons (except as described below) shall serve the Acknowledgment upon each Submitting Party through its Outside Counsel of Record so that the Acknowledgment is received by each Submitting Party at least five business days prior to such person’s reviewing or having access to such Submitting Party’s Stamped Highly Confidential Documents or Highly Confidential Information, except that, where the person seeking access is one described in either clause 2 or 3 of paragraph 6, the Acknowledgment shall be delivered promptly prior to the person obtaining access. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Highly Confidential Documents to any persons seeking access. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person’s Acknowledgment (or where the person seeking access is one described in either clause 2 or 3 of paragraph 6, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Highly Confidential Documents or Highly Confidential Information. The Submitting Party shall make available for review the Stamped Highly Confidential Documents of such party at the offices of such party’s Outside Counsel of Record or, if the Submitting Party does not have Outside Counsel of Record, at the offices of such party’s in-house counsel; *provided, however*, that the Petitioner shall make available for review all of their Stamped Highly Confidential Documents at the offices of Petitioner’s Outside Counsel of Record (the Petitioner’s Custodian Counsel).

10. *Information in Electronic Format.* Upon written request as provided for in paragraph 9, a Reviewing Party may review and analyze Highly Confidential Information that is maintained in an electronic format. The Petitioner may require such electronic information be reviewed at the office of Petitioner’s Custodian Counsel. Any other party submitting Highly Confidential Information in electronic format may require such electronic information be reviewed at the office of their Outside Counsel of Record. The Petitioner must provide the Reviewing Party’s Outside Counsel of Record and Outside Consultants adequate and secure computer capacity to load and run their software and assist in obtaining any off-site software licenses that may be required. Petitioner’s Custodian Counsel must afford the Reviewing Party’s Outside Counsel and Outside Consultants a private and secure workplace, including private and secure storage and adequate shredding and disposal arrangements, where they may

review and analyze the data and prepare their analysis. The Reviewing Party's Outside Counsel and Outside Consultants may use the secure workplace 24 hours a day, seven days a week, until their analysis is complete and ready to be submitted to the Commission, and thereafter on an as needed basis until this proceeding, including any appeal, is final and no longer subject to judicial review.

11. The Petitioner must allow the Reviewing Party's Outside Counsel and Outside Consultants to perform an integrated analysis of the Petitioner's Highly Confidential Information at a single location in the offices of the Petitioner's Custodian Counsel. The Reviewing Party's Outside Counsel and Outside Consultants may print four copies of their analysis, three that are to be submitted to the Commission for purposes of this proceeding in accordance with paragraph 13 and one, identical to the analysis submitted to the Commission, which they may retain and use solely in accordance with the provisions of the *First Protective Order* and this *Modified Second Protective Order*. The Reviewing Party's Outside Counsel and Outside Consultants may also print any intermediate steps or work product necessary to perform their analysis, including charts and graphs, etc., and they may keep any printouts of that intermediate work product at the private, secure workplace at the offices of the Petitioner's Custodian Counsel until this proceeding, including any appeal, is final and no longer subject to judicial review; however, they are prohibited from removing any intermediate work product from the secure workplace. The Reviewing Party's Outside Counsel and Outside Consultants may take notes necessary to perform their analysis, and they may retain such notes until this proceeding, including any appeal, is final and no longer subject to judicial review. The Reviewing Party's Outside Counsel and Outside Consultants may, at their discretion, retain such notes at the secure workplace or remove them. If the Reviewing Party submits in the record any analysis that uses Highly Confidential Information, it must comply with the terms and conditions set forth in the *First Protective Order* and this *Modified Second Protective Order*. After their analysis is completed, the Reviewing Party's Outside Counsel and Outside Consultants may retain the data and analysis at a private, secure location in the offices of Petitioner's Custodian Counsel, where they may have access on an as needed basis until this proceeding, including any appeal, is final and no longer subject to judicial review. The Reviewing Party must submit an affidavit in the record of this proceeding, at the time it submits integrated analysis pursuant to paragraph 13, certifying that, as pertains to the review and analysis of Highly Confidential Information that is maintained in an electronic format pursuant to paragraphs 10 and 11, its Outside Counsel and Outside Consultants have removed from the offices of the Petitioner's Custodian Counsel only their notes and four copies of the final work product that is being submitted to the Commission, that they have not removed any intermediate work product, and that they have filed everything (other than their notes and one copy of their analysis) that they have removed.

12. *Requests for Additional Disclosure.* If any person requests disclosure of Highly Confidential Information outside the terms of this *Modified Second Protective Order*, such a request will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

13. *Filings with the Commission.* Persons described in paragraph 6 may, in any documents that they file in this proceeding, reference Highly Confidential Information, but only if they comply with the following procedure: Two copies of each filing that contains or references Highly Confidential Information pursuant to this *Modified Second Protective Order* (the Confidential Filing) must be delivered in person to Gary Remondino, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The filing should be accompanied by a cover letter prominently stating "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 06-172." Each page of the confidential or proprietary document should be stamped "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 06-172 before the Federal Communications Commission." In addition, the Submitting Party must file with the Secretary's Office one copy of the Confidential Filing and two copies of the Confidential Filing in redacted form (the Redacted Confidential

Filing). The two copies of the Redacted Confidential Filing and their accompanying cover letters should be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing should state that the Submitting Party is filing a redacted version of the particular Confidential Filing. Parties should not provide courtesy paper copies of filings containing Highly Confidential Information to Commission Staff unless the Bureau so requests, in which case the Submitting Party may print as many copies as the Bureau requests in addition to the four specified in paragraph 11. Any such courtesy copies shall be submitted under seal. All parties should submit an electronic copy of filings containing Highly Confidential Information to Tim Stelzig (Tim.Stelzig@fcc.gov) and Denise Coca (Denise.Coca@fcc.gov), but should not submit any additional non-redacted electronic courtesy copies unless they are specifically requested by Bureau or Commission Staff.

14. *Client Consultation.* Nothing in this *Modified Second Protective Order* shall prevent or otherwise restrict Outside Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Highly Confidential Documents or Highly Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, outside Counsel shall not disclose Stamped Highly Confidential Documents or Highly Confidential Information.

15. *No Waiver of Confidentiality.* Disclosure of Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Highly Confidential Information. Reviewing parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Highly Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

16. *Subpoena by Courts, Departments or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of Stamped Highly Confidential Documents or Highly Confidential Information that a party has obtained under terms of this *Modified Second Protective Order*, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Highly Confidential Document or Highly Confidential Information.

17. *Violations of Modified Second Protective Order.* Should a person that has properly obtained access to Highly Confidential Information under this Second Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this *Modified Second Protective Order*, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly Confidential Information in this or any other Commission proceeding. Nothing in this *Modified Second Protective Order* shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Highly Confidential Information in a manner not authorized by this *Modified Second Protective Order*.

18. *Termination of Proceeding.* The provisions of this *Modified Second Protective Order* shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 6 shall destroy or

return to the Submitting Party Stamped Highly Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Highly Confidential Documents may be retained by any person having access thereto, except Outside Counsel (as described in paragraph 6) may retain, under the continuing strictures of this *Modified Second Protective Order*, one copy of the pleading containing Highly Confidential Information prepared on behalf of that party. All Outside Counsel shall make certification of compliance herewith and shall deliver the same to Outside Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding and any administrative or judicial review. The provisions of this paragraph regarding retention of Stamped Highly Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

ATTACHMENT TO APPENDIX D

Acknowledgment of Confidentiality

WC Docket No. 06-172

I hereby acknowledge that I have received and read a copy of the foregoing *Modified Second Protective Order* for the purpose of participating in the appeal of the *Qwest Phoenix MSA Forbearance Order* in the above-captioned proceeding, and I understand it. I agree that I am bound by the *Modified Second Protective Order* and that I shall not disclose or use Stamped Highly Confidential Documents or Highly Confidential Information except as allowed by this *Modified Second Protective Order*. I acknowledge that a violation of the *Modified Second Protective Order* is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the *Modified Second Protective Order* is due solely to my capacity as Outside Counsel of Record or Outside Consultant to a party or other person described in paragraph 6 of the foregoing *Modified Second Protective Order* and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the *Modified Second Protective Order*.

I acknowledge that it is my obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in the *Modified Second Protective Order*; and (2) Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of paragraphs 7, 10, 11 and 13 of the *Modified Second Protective Order*, and I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Highly Confidential Documents or Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the *Modified Second Protective Order*.

Executed at _____ this ____ day of _____, ____.

[Name]
[Position]
[Employer]
[Representing]
[Address]
[Telephone]
[Email]

APPENDIX E

Modified First Protective Order in WC Docket No. 07-97

1. Documents submitted to the Commission in the course of forbearance proceedings may represent or contain confidential or proprietary information. This *Modified First Protective Order* is intended to facilitate and expedite the review of confidential information submitted by parties to this proceeding, including privileged and confidential information, such as trade secrets or financial information. To ensure that documents and materials in the above-referenced proceeding considered by Submitting Parties to be confidential and proprietary are afforded protection, the Wireline Competition Bureau hereby enters this *Modified First Protective Order*.

2. Non-Disclosure. Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person. A “stamped confidential document” means any document which bears the legend (or which otherwise has had the legend recorded upon it in a way that brings it to the attention of a reasonable examiner) “CONFIDENTIAL – SUBJECT TO FIRST PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION” to signify that it contains information believed to be subject to protection under the Commission’s rules. For purposes of this order, the term “document” means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission’s rules, pursuant to subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

3. Permissible Disclosure. Notwithstanding paragraph 2, stamped confidential documents may be disclosed subject to the provisions of subparagraphs (a) and (b), to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding, and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this *Modified First Protective Order*, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (See Attachment for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is described in paragraph 3 (other than an attorney) and who is employed by a competitor or potential competitor of the party that so designated the document, the party seeking such disclosure shall give at least five days’ advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. Such notice shall also be filed in the Commission’s

Electronic Comment Filing System (ECFS) for this docket. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

4. Access to Confidential Information. Any party producing confidential information pursuant to this order shall designate a Washington, D.C., location and such other locations as may be convenient at which all parties shall be permitted access to and review of requested confidential information pursuant to the other terms of this order, or pursuant to alternative arrangements agreed upon by the parties. Any such access or review may be limited to regular business hours after reasonable notice by the requesting party.

5. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided that such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the legend "CONFIDENTIAL - SUBJECT TO FIRST PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION."

6. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission in accordance with paragraph 5, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents. The Commission may, *sua sponte* or by petition, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. *See generally* 47 C.F.R. § 0.459.

7. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising therefrom, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed from which all confidential information is redacted. Persons filing pleadings under seal based on confidential information provided by others shall serve such pleadings by hand or overnight delivery on the party originally requesting confidential treatment of the underlying information.

8. Participation in Appeal of *Qwest Phoenix MSA Forbearance Order*. Notwithstanding any other provision of this *Modified First Protective Order*, and solely for the purpose of participating in the appeal of the *Qwest Phoenix MSA Forbearance Order*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622 (2010) to the United States Court of Appeals for the Tenth Circuit (*Qwest Corp. v. FCC*, Docket No. 10-9543), litigants' outside appellate and in-house counsel who have signed the certification required by paragraph 3(a) may: (i) obtain and review copies of the complete, non-redacted version of the *Qwest 4 MSA Forbearance Order*; and (ii) file with the court the non-redacted *Qwest 4 MSA Forbearance Order* or confidential information therein only in accordance with the rules of the United States Court of Appeals for the Tenth Circuit. Persons relying on this paragraph must comply with all of the other requirements of this *Modified First Protective Order* to the extent not inconsistent with this paragraph. Persons relying on this paragraph should file the written notice required by subparagraph 3(b) with the Wireline Competition Bureau in WC Docket No. 07-97 via the Commission's ECFS.

9. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of

this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

10. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the forbearance proceeding in which a confidential document is submitted and, in the course thereof, relying generally on examination of stamped confidential documents submitted in that proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 3 or 8 above.

11. Prohibited Copying. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Commission, with notice to counsel so designating the document.

12. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding.

13. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

14. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for purposes of filing at the Commission under seal.

15. Return of Confidential Documents. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties that have received stamped confidential documents shall either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

16. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, *see* 47 C.F.R. § 1.24, or possible referral to the relevant local bar.

ATTACHMENT TO APPENDIX E

WC DOCKET NO. 07-97

I have received a copy of the *Modified First Protective Order* in WC Docket No. 07-97. I have read the order and agree to comply with and be bound by the terms and conditions of the *Modified First Protective Order* for the purpose of participating in the appeal of the *Qwest Phoenix MSA Forbearance Order*. The signatory understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of the *Modified First Protective Order*.

SIGNATURE:

NAME PRINTED:

TITLE:

ADDRESS:

REPRESENTING:

EMPLOYER:

DATE:

APPENDIX F

Modified Second Protective Order in WC Docket No. 07-97

1. Any party seeking access to confidential documents subject to the *Modified Second Protective Order* shall request access pursuant to the terms of the *Modified Second Protective Order* and must sign the Acknowledgement of Confidentiality, attached as Attachment.

2. *Definitions.* As used herein, capitalized terms, not otherwise defined herein, shall have the following meanings:

“Stamped Highly Confidential Document” means any document, or any part thereof, that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings it to the attention of a reasonable examiner) “HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” unless the Commission determines, *sua sponte* or by request pursuant to sections 0.459 or 0.461 of its rules, that any such document is not entitled to such confidential treatment. The term “document” means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document a “Stamped Highly Confidential Document,” a Submitting Party signifies that it contains information that the Submitting Party believes should be subject to protection under the Freedom of Information Act (FOIA), the Commission’s implementing rules and this *Modified Second Protective Order*.

“Highly Confidential Information” means information contained in Stamped Highly Confidential Documents or derived therefrom that is not otherwise available from publicly available sources. Specifically, Highly Confidential Information covered by the *Modified Second Protective Order* refers to those portions of documents or data – or entire documents, if eligible in their entirety – that disclose the following: revenues or numbers of customers disaggregated by customer type and a market area smaller than the nation (such as a Metropolitan Statistical Area (MSA) or wire center service area) including carrier-specific E911 line count listings; details of the Submitting Party’s future plans to compete for a customer or specific groups or types of customers (e.g., business or wholesale customers) specifically including the Submitting Party’s future pricing strategies, product strategies, or marketing strategies; detailed or granular engineering capacity information; information regarding the specific locations where an intermodal competitor is able to use its own network, including its own loop facilities, through which it is willing and able, within a commercially reasonable time, to offer substitute services for the incumbent local exchange carrier’s (LEC) local service offerings; the identity or characteristics of specific customers or those with whom a company is negotiating; and those portions of documents that have some of the characteristics of more than one category of competitive sensitivity listed above. To the extent that a Submitting Party believes that future submissions fall into one of these categories, the Submitting Party must file a letter explaining which category the information falls within, and the Submitting Party may file under this *Modified Second Protective Order* only those documents specifically authorized by the Bureau.

“Outside Counsel of Record” or “Outside Counsel” means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in these proceedings, provided that such persons are not involved in competitive decision-making, *i.e.*, Outside Counsel’s activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or of any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Counsel of Record includes any attorney representing a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

“Outside Consultants” means consultants or experts retained for the purpose of assisting Counsel or a party in this proceeding, provided that the Outside Consultants are not involved in competitive decision-making, *i.e.*, Outside Consultants’ activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Consultants include any expert employed by a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

“Reviewing Party” means a person who has obtained access to Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 6 and 9 of this *Modified Second Protective Order*.

3. *Use of Highly Confidential Information.* Persons obtaining access to Highly Confidential Information (including Stamped Highly Confidential Documents) under this *Modified Second Protective Order* shall use the information solely for the preparation and conduct of this forbearance proceeding before the Commission as delimited in this and subsequent paragraphs, and any judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including, without limitation, business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Highly Confidential Documents or Highly Confidential Information in its decision in this proceeding, it will do so by redacting any Highly Confidential Information from the public version of the decision and by making the non-redacted version of the decision available only to a court and to those persons entitled to access to Highly Confidential Information under this *Modified Second Protective Order*.

4. *Participation in Appeal of Qwest Phoenix MSA Forbearance Order.* Notwithstanding any other provision of this *Modified Second Protective Order*, and solely for the purpose of participating in the appeal of the *Qwest Phoenix MSA Forbearance Order*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622 (2010) to the United States Court of Appeals for the Tenth Circuit (*Qwest Corp. v. FCC*, Docket No. 10-9543), litigants’ outside appellate counsel who have signed the certification required by paragraph 1 may: (i) obtain and review copies of the complete, non-redacted version of the *Qwest 4 MSA Forbearance Order*; and (ii) file with the court the non-redacted *Qwest 4 MSA Forbearance Order* or highly confidential information therein only in accordance with the rules of the United States Court of Appeals for the Tenth Circuit. Persons relying on this paragraph must comply with all of the other requirements of this *Modified Second Protective Order* to the extent not inconsistent with this paragraph. Persons relying on this paragraph should file the written notice required by paragraph 9 with the Wireline Competition Bureau in WC Docket No. 07-97 via the Commission’s Electronic Comment Filing System (ECFS).

5. *Non-Disclosure of Stamped Highly Confidential Information.* Except with the prior written consent of the Submitting Party, or as hereinafter provided under this *Modified Second Protective Order*, neither a Stamped Highly Confidential Document nor any Highly Confidential Information may be disclosed by a Reviewing Party to any person other than the Commission and its staff.

6. *Permissible Disclosure.* Subject to the requirements of paragraph 9, Stamped Highly Confidential Documents may be reviewed by Outside Counsel and Outside Consultants. Outside Counsel and Outside Consultants may disclose Stamped Highly Confidential Documents and other Highly Confidential Information to: (1) paralegals or other employees of such Outside Counsel or Outside Consultants not described in clause 2 of this paragraph assisting Outside Counsel or Outside Consultants in this proceeding; (2) employees of such Outside Counsel or Outside Consultants involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding; and (3) employees of

third-party contractors performing one or more of the functions set forth in clause 2 of this paragraph. Reviewing Parties may discuss and share the contents of the Stamped Highly Confidential Documents and Highly Confidential Information with any other Reviewing Party and with the Commission and its staff. A Submitting Party's Stamped Highly Confidential Documents and Highly Confidential Information may also be disclosed to employees and Counsel of the Submitting Party, as otherwise permitted.

7. *Protection of Stamped Highly Confidential Documents and Highly Confidential Information.* Persons described in paragraph 6 shall have the obligation to ensure that access to Stamped Highly Confidential Documents and Highly Confidential Information is strictly limited as prescribed in this *Modified Second Protective Order*. Such persons shall further have the obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in this *Modified Second Protective Order*; and (2) Stamped Highly Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 13 below.

8. *Prohibited Copying.* If, in the judgment of the Submitting Party, a document contains information so sensitive (even given its Highly Confidential designation) that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited" and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to Outside Counsel of Record for the Submitting Party.

9. *Procedures for Obtaining Access to Highly Confidential Documents.* In all cases where access to Stamped Highly Confidential Documents and Highly Confidential Information is permitted pursuant to paragraph 6, before reviewing or having access to any Stamped Highly Confidential Documents or Highly Confidential Information, each person seeking such access shall execute the attached Acknowledgment of Confidentiality (Acknowledgment) and file it with the Bureau via the Commission's ECFS for this docket. All such persons (except as described below) shall serve the Acknowledgment upon each Submitting Party through its Outside Counsel of Record so that the Acknowledgment is received by each Submitting Party at least five business days prior to such person's reviewing or having access to such Submitting Party's Stamped Highly Confidential Documents or Highly Confidential Information. Where the person seeking access is one described in either clause 2 or 3 of paragraph 6, the Acknowledgment shall be delivered promptly prior to the person obtaining access. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Highly Confidential Documents to any persons seeking access. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 2 or 3 of paragraph 6, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Highly Confidential Documents or Highly Confidential Information. The Submitting Party shall make available for review the Stamped Highly Confidential Documents of such party at the offices of such party's Outside Counsel of Record or, if the Submitting Party does not have Outside Counsel of Record, at the offices of such party's in-house counsel; *provided, however*, that multiple Submitting Parties filing together shall make available for review all of their Stamped Highly Confidential Documents at the offices of one of the Submitting Parties' Outside Counsel of Record (the Submitting Parties' Custodian Counsel).

10. *Information in Electronic Format.* Upon written request as provided for in paragraph 9, a Reviewing Party may review and analyze Highly Confidential Information that is maintained in an electronic format. The Submitting Party may require such electronic information be reviewed at the office of Submitting Party's Custodian Counsel. Any other party submitting Highly Confidential

Information in electronic format may require such electronic information be reviewed at the office of their Outside Counsel of Record. The Submitting Party must provide the Reviewing Party's Outside Counsel of Record and Outside Consultants adequate and secure computer capacity to load and run their software and assist in obtaining any off-site software licenses that may be required. Submitting Party's Custodian Counsel must afford the Reviewing Party's Outside Counsel and Outside Consultants a private and secure workplace, including private and secure storage and adequate shredding and disposal arrangements, where they may review and analyze the data and prepare their analysis. The Reviewing Party's Outside Counsel and Outside Consultants may use the secure workplace 24 hours a day, seven days a week, until their analysis is complete and ready to be submitted to the Commission, and thereafter on an as needed basis until this proceeding, including any appeal, is final and no longer subject to judicial review.

11. The Submitting Party must allow the Reviewing Party's Outside Counsel and Outside Consultants to perform an integrated analysis of the Submitting Party's Highly Confidential Information at a single location in the offices of the Submitting Party's Custodian Counsel. The Reviewing Party's Outside Counsel and Outside Consultants may print four copies of their analysis, three that are to be submitted to the Commission for purposes of this proceeding in accordance with paragraph 13 and one, identical to the analysis submitted to the Commission, which they may retain and use solely in accordance with the provisions of the *Modified First Protective Order* and this *Modified Second Protective Order*. The Reviewing Party's Outside Counsel and Outside Consultants may also print any intermediate steps or work product necessary to perform their analysis, including charts and graphs, *etc.*, and they may keep any printouts of that intermediate work product at the private, secure workplace at the offices of the Submitting Party's Custodian Counsel until this proceeding, including any appeal, is final and no longer subject to judicial review; however, they are prohibited from removing any intermediate work product from the secure workplace. The Reviewing Party's Outside Counsel and Outside Consultants may take notes necessary to perform their analysis, and they may retain such notes until this proceeding, including any appeal, is final and no longer subject to judicial review. The Reviewing Party's Outside Counsel and Outside Consultants may, at their discretion, retain such notes at the secure workplace or remove them. If the Reviewing Party submits in the record any analysis that uses Highly Confidential Information, it must comply with the terms and conditions set forth in the *Modified First Protective Order* and this *Modified Second Protective Order*. After their analysis is completed, the Reviewing Party's Outside Counsel and Outside Consultants may retain the data and analysis at a private, secure location in the offices of Submitting Party's Custodian Counsel, where they may have access on an as needed basis until this proceeding, including any appeal, is final and no longer subject to judicial review. The Reviewing Party must submit an affidavit in the record of this proceeding, at the time it submits integrated analysis pursuant to paragraph 13, certifying that, as pertains to the review and analysis of Highly Confidential Information that is maintained in an electronic format pursuant to paragraphs 10 and 12, its Outside Counsel and Outside Consultants have removed from the offices of the Submitting Party's Custodian Counsel only their notes and four copies of the final work product that is being submitted to the Commission, that they have not removed any intermediate work product, and that they have filed everything (other than their notes and one copy of their analysis) that they have removed.

12. *Requests for Additional Disclosure.* If any person requests disclosure of Highly Confidential Information outside the terms of this *Modified Second Protective Order*, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.

13. *Filings with the Commission.* Persons described in paragraph 6 may, in any documents that they file in this proceeding, reference Highly Confidential Information, but only if they comply with the following procedure: Two copies of each filing that contains or references Highly Confidential Information pursuant to this *Modified Second Protective Order* (the Confidential Filing) must be delivered in person to Gary Remondino, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The filing should be accompanied by a cover letter prominently stating "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 07-97." Each page of the confidential or

proprietary document should be stamped "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." In addition, the submitting party must file with the Secretary's Office one copy of the Confidential Filing and two copies of the Confidential Filing in redacted form (the Redacted Confidential Filing). The two copies of the Redacted Confidential Filing and their accompanying cover letters should be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing should state that the Submitting Party is filing a redacted version of the particular Confidential Filing. Parties should not provide courtesy paper copies of filings containing Highly Confidential Information to Commission Staff unless the Bureau so requests, in which case the Submitting Party may print as many copies as the Bureau requests in addition to the four specified in paragraph 11. Any such courtesy copies shall be submitted under seal. All parties should submit an electronic copy of filings containing Highly Confidential Information to Tim Stelzig (Tim.Stelzig@fcc.gov) and Denise Coca (Denise.Coca@fcc.gov), but should not submit any additional non-redacted electronic courtesy copies unless they are specifically requested by Bureau or Commission staff.

14. *Client Consultation.* Nothing in this *Modified Second Protective Order* shall prevent or otherwise restrict Outside Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Highly Confidential Documents or Highly Confidential Information; *provided, however,* that in rendering such advice and otherwise communicating with such client, outside Counsel shall not disclose Stamped Highly Confidential Documents or Highly Confidential Information.

15. *No Waiver of Confidentiality.* Disclosure of Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Highly Confidential Information. Reviewing parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Highly Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

16. *Subpoena by Courts, Departments or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of Stamped Highly Confidential Documents or Highly Confidential Information that a party has obtained under terms of this *Modified Second Protective Order*, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Highly Confidential Document or Highly Confidential Information.

17. *Violations of Modified Second Protective Order.* Should a person that has properly obtained access to Highly Confidential Information under this *Modified Second Protective Order* violate any of its terms, that person shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this *Modified Second Protective Order*, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly Confidential Information in this or any other Commission proceeding. Nothing in this *Modified Second Protective Order* shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Highly Confidential Information in a manner not authorized by this *Modified Second Protective Order*.

18. *Termination of Proceeding.* The provisions of this *Modified Second Protective Order* shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 6 shall destroy or return to the Submitting Party Stamped Highly Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Highly Confidential Documents may be retained by any person having access thereto, except Outside Counsel (as described in paragraph 6) may retain, under the continuing strictures of this *Modified Second Protective Order*, one copy of the pleading containing Highly Confidential Information prepared on behalf of that party. All Outside Counsel shall make certification of compliance herewith and shall deliver the same to Outside Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding and any administrative or judicial review. The provisions of this paragraph regarding retention of Stamped Highly Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

ATTACHMENT TO APPENDIX F

Acknowledgment of Confidentiality

WC Docket No. 07-97

I hereby acknowledge that I have received and read a copy of the foregoing *Modified Second Protective Order* for the purpose of participating in the appeal of the *Qwest Phoenix MSA Forbearance* in the above-captioned proceeding, and I understand it. I agree that I am bound by the *Modified Second Protective Order* and that I shall not disclose or use Stamped Highly Confidential Documents or Highly Confidential Information except as allowed by this *Modified Second Protective Order*. I acknowledge that a violation of the *Modified Second Protective Order* is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the *Modified Second Protective Order* is due solely to my capacity as Outside Counsel of Record or Outside Consultant to a party or other person described in paragraph 6 of the foregoing *Modified Second Protective Order* and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the *Modified Second Protective Order*.

I acknowledge that it is my obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in the *Modified Second Protective Order*; and (2) Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of paragraphs 7, 10, 11, and 13 of the *Modified Second Protective Order*, and I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Highly Confidential Documents or Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the *Modified Second Protective Order*.

Executed at _____ this ____ day of _____, ____.

[Name]
[Position]
[Address]
[Telephone]
[Email]